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7590 PAUL KENNEDY 1237 OAK STREET SAN MATEO, CA 95129		EXAMINER LAFORGIA, CHRISTIAN A		
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* PAUL KENNEDY

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Appeal 2007-3497  
Application 09/841,008  
Technology Center 2100

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Decided: March 28, 2008

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Before JAMES D. THOMAS, LEE E. BARRETT,  
and MAHSHID D. SAADAT, *Administrative Patent Judges*.

THOMAS, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal involves claims 9 through 25. We have jurisdiction under 35 U.S.C. §§ 6(b) and 134(a).

We affirm-in-part.

As best representative of the disclosed and claimed invention, we reproduce independent claim 9 below:

9. A method for authenticating users to individual network devices that are distributed among a plurality of locations, comprising the following steps:

storing a directory structure at one of said locations, said directory structure comprising a root node, a first level of nodes below said root node that are associated with respective organizations to which said network devices are assigned, and at least one further level of nodes below said first level that identify users who are authorized to access the network devices assigned to the organization associated with a parent first-level node and authentication information for said users;

replicating said directory structure among said plurality of locations;

in response to a request by a user for access to one of said network devices, determining which organization to which said one device is assigned and whether said user is identified on a node below the first-level node associated with the determined organization; and

authenticating said user to said device if the user is so identified.

The following references are relied on by the Examiner:

Aldred	US 6,438,549 B1	Aug. 20, 2002 (filing date December 3, 1998)
Pang	US 6,446,204 B1	Sep. 3, 2002 (filing Date October 31, 1997)
Byrne	US 6,708,170 B1	Mar. 16, 2004 (filing date December 14, 1999)

Claims 9 through 25 stand rejected under 35 U.S.C. § 103. As evidence of obviousness as to claims 9 through 12, 14 through 18, 20 through 23, and 25, the Examiner relies upon Aldred in view of Byrne. In a second stated rejection, the Examiner adds Pang to this initial combination of references as to claims 13, 19, and 24.

Rather than repeat verbatim the positions of the Appellant and the Examiner, reference is made to the Brief (no Reply Brief has been filed) for Appellant's positions, and to the Answer for the Examiner's positions.

#### OPINION

For the reasons generally set forth by the Examiner in the Answer, as embellished upon here, we sustain the rejection of claims 16 through 25, but we reverse the rejection of claims 9 through 15.

At the outset, we observe that the claimed directory structure is set forth substantially identically in independent claims 9, 16, and 21 on appeal. The feature of replicating in claim 9 is also recited briefly in independent claim 21 but is not found in independent claim 16. Correspondingly, claim 9 recites the feature of:

in response to a request by a user for access to one of said network devices, determining which organization to which said one device is assigned and whether said user is identified on a node below the first-level node associated with the determined organization.

This feature utilizes the data structures set forth in the hierarchy of the directory structure clause including the root node, the first level of nodes and the at least one further level of nodes in determining which organization to which one device is assigned and whether a user is identified on a node below the first-level node. Corresponding features are not found in independent claims 16 and 21.

It is because of the recitation of this responsive clause at the end of independent claim 9 on appeal that we reverse the rejection of independent claim 9 as well as of its dependent claims 10 through 15. Other than the

Examiner's correlation of the showings in figures 1, 2, and 7 of Aldred relating to directory structures, independent claims 16 and 21 do not reflect further structural distinctions among the data structures and do not utilize the data structures set forth in the directory structure clause common to each independent claim on appeal.

Independent claims 16 and 21 reflect essentially data structures per se in the form of a essentially nameable nodes which are consistent with the discussion beginning at the bottom of column 3 through at least the top of column 4 of Aldred which indicates that the various nodes within the depicted tree structure in figure 2 may be distinguished based upon name. As such, the actual level names of the nodes, such as organizations, users or resources, reflect merely an intended use of what was known in the prior art. According to the teachings at columns 3 and 4 of Aldred, the artisan was well aware of the ability to label or otherwise name the nodes according to the intended uses desired. Alternatively, the labels attached to the respective nodes in the claims reflect nonfunctional descriptive material with which independent claims 16 and 21 do not recite a use thereof of the data structures set forth in the directory structure portion of these claims. Moreover and independently, the arguments presented by Appellant in the Brief in part appear to argue patentable distinctions based upon the labels attached to data per se that comprise the claimed directory structure levels in an effort to distinguish over the corresponding teachings in Aldred. Nonfunctional descriptive material cannot render patentable or nonobvious an invention that otherwise would have been unpatentable or obvious. *In re*

*Ngai*, 367 F.3d 1336, 1339 (Fed. Cir. 2004). *Cf. In re Gulack*, 703 F.2d 1381, 1385 (Fed. Cir. 1983) (when descriptive material is not functionally related to the substrate, the descriptive material will not distinguish the invention from the prior art in terms of patentability).

Since dependent claim 13 has been rejected under the second stated rejection where the Examiner further utilizes Pang in addition to Aldred and Byrne, the Examiner's positions do not appear to assert that Pang teaches the features of independent claim 9 on which we base our reversal. Therefore, Pang does not appear to cure the deficiencies noted with respect to the combination of Aldred and Byrne.

Since independent claims 16 and 21 do not reflect the patentable distinguishing characteristic recited in independent claim 9, we sustain the rejection of them for the reasons set forth earlier. With respect to the argued features at page 6 of the Brief relative to claims 17 and 22 and 18 and 23 respectively, the common argument is that Aldred does not teach the type of information associated with the levels within a directory. Within the general teachings outlined earlier in Aldred and the absence of the claimed use of the data structures as in claim 9, the artisan is free to characterize or otherwise name the directory's levels according to any type or label as discussed earlier, particularly in view of the general teachings of the artisan's ability to do this according to the teachings at columns 3 and 4 of Aldred.

The only arguments presented before us as to the Byrne patent are at the bottom of page 5 of the Brief. We note that Appellant does not argue that Byrne is not properly combinable with Aldred within 35 U.S.C. § 103 and does not contest what the Examiner asserts that Byrne teaches. The

Examiner relies upon the replication teachings mentioned at least at column 2, lines 32 through 37 to the extent claimed and noted in the rejections of the claims we affirmed. The teachings of Byrne are consistent with Aldred to the extent they both relate to the so-called LDAP directory access protocol approaches for searching requests. At a minimum the showings in figure 4A, 4B confirm the general teachings already outlined earlier in this opinion permitting the user to label or otherwise characterize the information data structure as desired.

Lastly, Appellant's arguments with respect to the second stated rejection at pages 6 and 7 of the Brief are noted. Again, Appellant does not argue that the additional teachings of Pang are not properly combinable within 35 U.S.C. § 103 with those of Aldred and Byrne and does not contest what the Examiner has asserted Pang teaches. Appellant appears to be rearguing again the directory structure already associated with the first stated rejection to which we have affirmed the rejection of independent claims 16 and 21 only and not independent claim 9. Thus, the separate rejection of dependent claims 19 and 24 is affirmed.

In view of the foregoing, the decision of the Examiner rejecting various claims on appeal within 35 U.S.C. § 103 is affirmed-in-part.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. §1.136(a). See 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART

pgc

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